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9 JASON CARUCCI  
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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 UNITED STATES OF AMERICA,

16 Case No. CR 19-cr-00574 BLF

17 Plaintiff,

18  
**STIPULATION CONTINUING CHANGE  
19 OF PLEA AND EXCLUDING TIME**

20 v.

21 JASON CARUCCI,

22 Defendant.

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28 Defendant Carucci is on for a change of plea hearing on September 28, 2020. Defense counsel  
has not been able to review the proposed plea agreement and discuss it with Mr. Carucci. The final plea  
agreement was approved by the U.S. Attorney's Office on September 14, 2020. Defense counsel mailed  
a copy to Mr. Carucci the next day, September 15, 2020. As of the last time defense counsel spoke with  
Mr. Carucci on September 22, 2020, Mr. Carucci still had not received the plea agreement mailed to him  
one week earlier.

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34 The parties therefore stipulate and agree that the hearing set for September 28, 2020 may be  
35 vacated and rescheduled for November 4, 2020.

1 It is further stipulated that the time from the signing of this stipulation to November 4, 2020 may  
2 be excluded from the time in which this case must be brought to trial under the Speedy Trial Act, 18  
3 U.S.C. 3141(h)(7)(A), because it results from a continuance granted by the Court at defendant's request  
4 on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best  
5 interest of the public and the defendant in a speedy trial based on defense counsel's need to investigate  
6 and prepare the case.

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8 Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
9 natural disasters, or other emergencies, this Court has discretion to order a continuance and exclude time  
10 in such circumstances. *See, e.g., Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981) (finding no Speedy  
11 Trial Act violation where the district court granted an ends-of-justice continuance following the eruption  
12 of Mt. St. Helens). On May 1, 2020, Northern District of California Chief District Judge Phyllis J.  
13 Hamilton issued General Order No. 72-2, In Re: Coronavirus Disease Public Health Emergency. General  
14 Order No. 72-2 amends the Court's General Order No. 72, and sets forth the Court's finding that—in light  
15 of the state of emergency declared by the President of the United States and California; recommendations  
16 by the Centers for Disease Control and Prevention (CDC) to avoid large gatherings of people; and local  
17 public health departments' shelter-in-place directives; and the Court's reduced ability to obtain an  
18 adequate spectrum of jurors and the limitations on availability of counsel and court staff to be present in  
19 the courtroom based on COVID-19—“the current guidance of local and national public health officials  
20 requires that courthouses remain closed in order to protect the public health and reduce the size of public  
21 gatherings and unnecessary travel.” General Order 72-2 extends the Court's postponement of criminal  
22 jury trials and suspension of grand jury proceedings to June 1, 2020. The Order further directs “[e]ach  
23 judge assigned to a criminal trial scheduled before June 1, 2020 will make appropriate findings and enter  
24 an order tolling time under the Speedy Trial Act.”

The parties stipulate that the ends of justice are served by ordering a continuance in this case outweigh the interest of the public and any defendant's right to a speedy trial pursuant to 18 U.S.C. § 3161(h)(7)(A). COVID-19 is a global pandemic. To avoid the spread of COVID-19, the state of California is currently ordered to shelter in place and "heed the current State public health directives." California Executive Order N-33-20, available at <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf> (issued March 19, 2020). A number of other states have also ordered people to stay at home. <https://www.cnn.com/2020/03/23/us/coronavirus-which-states-stay-at-home-order-trnd/index.html>. These realities hamper counsels' ability to meet with the defendant, relevant personnel, and witnesses. Moreover, Defendant wishes to proceed with the change of plea remotely to obviate the need for an in-person hearing and minimize contact with other individuals, consistent with guidance from government officials and health professionals. A brief continuance is necessary so that the hearing can be scheduled to occur on a teleconferencing platform. A failure to grant the requested exclusion of time and continuance would therefore unreasonably deny counsel continuity of counsel or deny counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. A continuance and exclusion of time from September 28, 2020 to November 4, 2020 is therefore appropriate under 18 U.S.C. § 3161(h)(7)(B)(iv), as the ends of justice served the granting of such continuance outweigh the best interest of the public and the defendant in a speedy trial.

## SO STIPULATED.

DATED: September 25, 2020

/S/ 5  
JOHN BOSTIC  
Assistant U.S. Attorney

DATED: September 25, 2020

/S/

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3 **ORDER**  
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6 For the reasons set forth in this Court's General Order No. 72-2, set forth below in this Order, and set  
7 forth in the September 3, 2020 joint stipulation, this Court finds that continuance and exclusion from the time  
8 limits applicable under 18 U.S.C. § 3161 from September 24, 2020 to November 4, 2020, is warranted and  
9 serves the ends of justice, and outweighs the best interest of the public and the defendant in a speedy trial, in  
10 this case. 18 U.S.C. § 3161(h)(7)(A).

11 Responding to the COVID-19 (Coronavirus Disease) pandemic, numerous states, including  
12 California, are currently ordered to shelter in place and "heed the current State public health directives."  
13 California Executive Order N-33-20, available at <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>  
14 (issued March 19, 2020). These limits serve the public interest in stemming the spread of COVID-19 and  
15 therefore serve the ends of justice. 18 U.S.C. § 3161(h)(7)(A). These realities also mean that without the  
16 requested continuance, counsel would lack reasonable time necessary for effective preparation, taking into  
17 account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv).  
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19 Based on these findings, the Court hereby ORDERS that the change of plea is continued to November  
20 4, 2020 at 1:00 PM and that the time between September 24, 2020, and November 4, 2020 is excluded under  
21 the Speedy Trial Act.  
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23 **IT IS SO ORDERED.**  
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25 DATED: September 25, 2020  
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*Beth Labson Freeman*  
27 HON. BETH LABSON FREEMAN  
United States District Judge  
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